

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Alexandria Division**

**CAPTAIN JAMES LINLOR,**

**Plaintiff,**

**v.**

**CIVIL ACTION NO. 1:17-cv-00013 (JCC-JFA)**

**MICHAEL POLSON,**

**Defendant.**

**INDIVIDUAL CAPACITY DEFENDANT MICHAEL POLSON'S OBJECTIONS TO  
PLAINTIFF'S FIRST DISCOVERY REQUESTS**

Pursuant to Local Rule 26(C), and Rules 33 and 34 of the Federal Rules of Civil Procedure, the Defendant Michael Polson, in his individual capacity (hereinafter "Mr. Polson"), through his undersigned counsel, submits his objections to Plaintiff's First Discovery Requests in the above-captioned action.

**INTRODUCTION**

Although these objections are being filed within the period provided by Local Rule 26(C), counsel has not yet had a sufficient opportunity to review all material and information that may be responsive to Plaintiff's First Discovery Request. In the interest of providing full and complete discovery, at the time that Mr. Polson's responses are served, Mr. Polson may – if he has the authority to do so – elect to waive any of these objections with respect to any particular fact. Such waiver, should it occur, shall not be construed as a waiver of objections to other information. In accordance with Local Rule 37(E), counsel will also endeavor in good faith to resolve with Plaintiff any controversy that may arise with respect to any discovery matter or to narrow any issue in dispute.

The information that will be provided when Mr. Polson's responses are submitted will be provided in accordance with Federal Rule 26(b)(1), which permits the discovery of any non-privileged information that is relevant to a party's claim or defense and proportional to the needs of the case. Accordingly, Mr. Polson does not, by providing such information, waive any objection to its admissibility on the grounds of relevance, materiality, or other appropriate grounds.

Finally, responses will be generated after a reasonable, good-faith search for information within the "custody and control" of Mr. Polson. In this respect, as a mere example, Mr. Polson does not have "custody and control" over electronic mail servers maintained by the Transportation Security Administration ("TSA"); as such, Mr. Polson's electronic mail messages are not within his "custody and control." Materials within TSA's custody and control may be requested directly from the agency in accordance with the Federal Rules of Civil Procedure and all applicable laws and regulations. Mr. Polson notes that Plaintiff has already sought some materials directly from TSA with a subpoena that the Court issued (at Plaintiff's behest) to the agency.

#### **OBJECTIONS APPLICABLE TO EACH REQUEST**

1. Mr. Polson objects to Plaintiff's timeframe for answering these First Discovery Requests, because such timeframe is in contravention to the Federal Rules of Civil Procedure. Mr. Polson notes that Rule 33 requires interrogatories to be answered within 30 days of service. *See* FED. R. CIV. P. 33(b)(2). Likewise, Rule 34 requires a response to requests for production within 30 days of service. *Id.* at 34(b)(2)(A). Mr. Polson's attorney was served with the discovery, via express mail carrier, on August 7, 2017. Thus, in accord with Federal Rules

6(a)(1)(C) and 6(D), Mr. Polson's responses to Plaintiff's First Discovery Requests are due on or before Monday, September 11, 2017.

2. Mr. Polson objects to Plaintiff's written discovery requests to the extent they seek information not relevant to the claims or defenses of either party to this action or disproportionate to the needs of this case, and thus not within the scope of permitted discovery under Federal Rule 26(b)(1).

3. Mr. Polson objects to Plaintiff's written discovery requests to the extent they seek information protected by the attorney-client privilege, the attorney work-product privilege, or the deliberative process privilege. In this respect, documents generated after the filing of Plaintiff's initial complaint in this action representing either communications with counsel or material generated at the express direction of counsel – and thus clearly protected by either the attorney-client privilege or the attorney work-product doctrine – will be treated as non-responsive and therefore will not appear on any privilege log.

4. Mr. Polson objects to Plaintiff's written discovery requests to the extent they seek information that is obtainable from some other source that is more convenient, less burdensome, or less expensive, including, but not limited to, information previously provided to Plaintiff or that Plaintiff has or should have, and information that is or will be equally available to Plaintiff. In this regard, Mr. Polson reserves the right to object to Plaintiff's written discovery requests where they are unduly burdensome in both financial cost and manpower, especially in relation to the relevance of the sought information to Plaintiff's claims and Mr. Polson's defenses.

4. Mr. Polson objects to Plaintiff's requests to the extent they seek information protected by the law enforcement privilege, as Mr. Polson's position with his former employer afforded him access to information that may be considered law enforcement sensitive ("LES")

information. Thus, Mr. Polson objects to producing any case- or assignment-specific information or law enforcement techniques or other LES information that may be responsive to Plaintiff's requests, disclosure of which may harm a law enforcement investigation, as protected from disclosure pursuant to the law enforcement privilege.

5. Mr. Polson objects to the form that Plaintiff requests be used for producing Electronically Stored Information ("ESI") as vague and ambiguous, as it is not clear what Plaintiff means by "readable via public software on a Windows-based computer." Thus, to the extent that Mr. Polson has "custody and control" over ESI that is responsive to Plaintiff's written discovery requests, Mr. Polson will produce such documents in accord with Federal Rule of Civil Procedure 34(b)(2)(E).

6. Mr. Polson's objects to Plaintiff's position that Mr. Polson was served, via TSA and the Metropolitan Washington Airports Authority ("MWAA"), with a request to preserve evidence. Mr. Polson cannot be "served" with such a request by either nonparty organization, and thus, did not have any obligation to preserve evidence that was not within his custody or control before he reasonably could anticipate the potential for litigation.

7. After each Request for Production and Interrogatory, Plaintiff inserts a paragraph entitled "Basis," which purports to elucidate Plaintiff's reason(s) for requesting the documents and/or information. Mr. Polson objects to such paragraphs, as they are in contravention to the Federal Rules of Civil Procedure, and are statements which do not require responses.

### **INTERROGATORIES**

**Interrogatory No. 1:** Describe all actions and activities you took or performed and the reasons for them, for all parts of your interactions with Plaintiff, as well as with TSA or MWAA personnel, during the period when Plaintiff was present anywhere in the TSA Pre-check area on

10 March 2016 (from Plaintiff's first arrival at the entry area until Plaintiff departed the pat-down area towards the concourse).

**Objections to Interrogatory No. 1:** Mr. Polson objects to this interrogatory because it does not provide a definition for the term "you," which renders the interrogatory vague and ambiguous, and thus overbroad pursuant to Federal Rule 26(b)(1). Presuming that the term "you" references Mr. Polson (in his individual capacity), Mr. Polson additionally objects to this interrogatory to the extent that it seeks Sensitive Security Information (SSI), which is protected from disclosure pursuant to 49 U.S.C. § 114(r) and 49 C.F.R. Part 1520. Indeed, Mr. Polson is precluded from releasing such information without receiving the prior appropriate approval from TSA. Finally, Mr. Polson notes that this Interrogatory, in actuality, constitutes three interrogatories pursuant to Federal Rule 33, as it contains three discrete subparts.

**Interrogatory No. 2:** Describe what consequences you have dealt with, and how you have responded in defense of yourself and your actions or inactions, as a result of your interactions with Plaintiff and your citizen's arrest by Plaintiff for felony sexual battery on 10 March 2016.

**Objections to Interrogatory No. 2:** Mr. Polson objects to this interrogatory because it does not provide a definition for the term "you," or the phrase "consequences you have dealt with," which renders the interrogatory vague and ambiguous, and thus overbroad pursuant to Federal Rule 26(b)(1). Presuming that the term "you" references Mr. Polson (in his individual capacity), Mr. Polson additionally objects to this interrogatory to the extent that it seeks Sensitive Security Information (SSI), which is protected from disclosure pursuant to 49 U.S.C. § 114(r) and 49 C.F.R. Part 1520. Indeed, Mr. Polson is precluded from releasing such information

without receiving the prior appropriate approval from TSA. Finally, Mr. Polson objects to this interrogatory because it constitutes four interrogatories, as it contains four discrete subparts.

**Interrogatory No. 3:** Describe what actions you took, or were instructed to take (and by whom) after you were released by MWAA officers from Plaintiff's custody of you as a result of Plaintiff's citizen's arrest of you for felony sexual battery on 10 March 2016.

**Objections to Interrogatory No. 3:** Mr. Polson objects to this interrogatory for several reasons. First, does not provide a definition for the term "you," which renders the interrogatory vague and ambiguous, and thus overbroad pursuant to Federal Rule 26(b)(1). Second, literally read, the interrogatory has absolutely no limiting principle; *i.e.*, it asks for a description of those "actions" taken "after" a certain alleged event, but does not limit the "actions" to be described to a particular subject-matter. This similarly renders the interrogatory overbroad pursuant to Federal Rule 26(b)(1). Third, consistent with the general objections listed above, Mr. Polson objects to this interrogatory to the extent it seeks information protected by attorney-client privilege. Finally, Mr. Polson objects to this interrogatory to the extent that it seeks Sensitive Security Information (SSI), which is protected from disclosure pursuant to 49 U.S.C. § 114(r) and 49 C.F.R. Part 1520. Indeed, Mr. Polson is precluded from releasing such information without receiving the appropriate approval from TSA.

**Interrogatory No. 4:** Describe any conversations with anyone, specifying with whom, along with the conversations' purposes and resulting decisions, comments, and/or follow-up actions by anyone, you have had resulting from the incident of 10 March 2016 where video evidence shows you to have struck Plaintiff's genitals.

**Objections to Interrogatory No. 4:** Mr. Polson objects to this interrogatory because it does not provide a definition for the term "you," or the phrase "purposes and resulting

decisions,” which renders the interrogatory vague and ambiguous, and thus overbroad pursuant to Federal Rule 26(b)(1). Mr. Polson also objects to this interrogatory to the extent that it seeks information protected by attorney-client privilege, as it seeks a description of any conversations with anyone. Further, Mr. Polson objects to this interrogatory to the extent that it seeks Sensitive Security Information (SSI), which is protected from disclosure pursuant to 49 U.S.C. § 114(r) and 49 C.F.R. Part 1520. Indeed, Mr. Polson is precluded from releasing such information without receiving the appropriate approval from TSA. Finally, Mr. Polson objects to this request because it constitutes two interrogatories, as it contains two discrete subparts.

**Interrogatory No. 5:** Describe why you claim to believe -- as stated in your FRCP 12(b)(6) response -- that even if the Court were to find that you used excessive force in the incident of 10 March 2016 where video evidence shows you to have struck Plaintiff’s genitals, that you would *not* have known that striking a compliant passenger in the genitals during a normal patdown search would constitute excessive and unreasonable force, and would therefore demonstrate deliberate indifference or recklessness in violation of the 4th Amendment to the US Constitution prohibiting such occurrences or practices.

**Objection to Interrogatory No. 5:** Mr. Polson objects to this interrogatory because it seeks information protected by attorney-client privilege and attorney work product. Specifically, it seeks the mental impressions, the legal conclusions, the legal opinions, and the legal theories behind Mr. Polson’s defense in this action.

### **REQUESTS FOR PRODUCTION**

**Request No. 1:** All parties’ names, roles, and contact information whom Defendant knows or has reason to believe may have detailed knowledge of this case, or with whom Defendant has discussed details of this case.

a. Disclosures above shall include: Copies of all parties' full names, titles/capacities of employment, addresses, email addresses, and phone numbers.

b. Names shall be annotated with a) topics of presumed knowledge, b) all dates Defendant was in communication with listed parties.

**Objections to Request No. 1:** Mr. Polson objects to this request for several reasons.

First, Mr. Polson objects to this request because it does not comply with Rule 34 of the Federal Rules of Civil Procedure, in that it does not ask for the production of documents; in other words, Rule 34 does not require Mr. Polson to create documents in order to respond to a request for production. Even assuming that this *were* a request for documents with the above parameters, Mr. Polson objects to the request because it would be well overbroad pursuant to Rule 26(b)(1), in that – literally read – would require production of any and all documents that contains the name and other identifying information of those who “may have detailed knowledge of this case, or with whom Defendant has discussed details of this case,” regardless of whether those documents had any relevance to “this case.” Moreover, Mr. Polson objects to this Request because it does not define the term “this case,” which renders the Request vague and ambiguous. Finally, Mr. Polson objects to this Request to the extent that it seeks documents protected by attorney-client privilege.

**Request No. 2:** All electronic messages accessible by (sent to/from) the Defendant during the period related to this case.

a. Disclosures of above shall include: emails, letters, social media postings, private messages, and text messages, all on US Government or any private accounts or wireless devices.



b. Responses shall also include: Identification of all official and private electronic accounts used by Defendant during the period, to include social media platforms and user names, email systems and login/user names, any "text messages" (SMS messages), plus call logs (inbound/outbound) all on any system or device, personal or official. Phone numbers and wireless carriers of all cellphones (or similar wireless devices), or landlines, used by Defendant during the period are included in this request.

**Objections to Request No. 2:** Mr. Polson objects to this request for several reasons.

First, Mr. Polson objects to this Request because it is extremely overbroad and thus unduly burdensome and not proportional to the needs of the case, as required by Federal Rule 26(b)(1). In this respect, this Request requests, *inter alia*, “[a]ll electronic messages accessible by (sent to/from) the Defendant during the [eighteen-month] period related to this case,” without *any* requirement that responsive documents be in any way connected to the claims or defenses of this case. Second, Mr. Polson objects to this Request because it does not comply with Rule 34 of the Federal Rules of Civil Procedure, in that Rule 34 does not require Mr. Polson to create documents in order to respond to a request for production. Moreover, Mr. Polson objects to this Request because it seeks documents protected by attorney-client privilege, as it requests “all electronic messages.”

**Request No. 3:** All statements, notes, and copies thereof provided by Defendant as reports or incident details to any and all investigatory bodies.

a. Disclosures of above shall include: Unredacted copies of written or documented statements in any form by Defendant regarding the event involving Plaintiff of 10 March 2016, and any related actions by Defendant. This shall include statements made in any

form, to any person or representative of the TSA, MWAA, AFGE, or any other group or agency with whom Defendant was in-contact.

b. Defendant's response shall also include: Reporting documentation by Defendant or his supervisors of citizen's arrest upon Defendant by Plaintiff of 10 March 2016, including discussions with any MWAA personnel in any capacity, TSA personnel in any capacity, or AFGE, or reported explanations of why Defendant's arrest should not be investigated under TSA or other official policies.

**Objection to Request No. 3:** Mr. Polson objects to this Request for several reasons.

First, Mr. Polson objects to this Request because it is extremely overbroad and thus unduly burdensome and not proportional to the needs of the case, as required by Federal Rule 26(b)(1). In this respect, the Request requires production of “[a]ll statements, notes, and copies” made to “any and all investigatory bodies,” without any connection to the claims or defenses in this civil action, or the alleged incident that is the subject of this civil action. Second, Mr. Polson objects to this Request because it does not comply with Rule 34 of the Federal Rules of Civil Procedure, in that Rule 34 does not require Mr. Polson to create documents in order to respond to a request for production. And due to the expansive nature of this request, Mr. Polson objects to the request to the extent that it seeks Sensitive Security Information (SSI), which is protected from disclosure pursuant to 49 U.S.C. § 114(r) and 49 C.F.R. Part 1520. Indeed, Mr. Polson is precluded from releasing such information without receiving the appropriate approval from TSA. Moreover, Mr. Polson objects to this Request because it seeks documents protected by attorney-client privilege, as it requests “[a]ll statements, notes, and copies” made by Mr. Polson.

**Request No. 4:** Training records and training materials for Defendant specifically with regards to pat-downs, and discussions and/or application of TSA SOPs.

a. Disclosures of above shall include: copies of TSA SOP excerpts as referenced by Defendant and Defense Counsel Nicole Murley in their FRCP 12(b)(6) filing and oral arguments claiming that ramming force by a TSO into a passenger's genitals is approved under TSA SOP, and that such ramming force is therefore incidental and should normally be performed by TSOs on all passengers as part of TSA SOPs.

**Objections to Request No. 4:** Mr. Polson objects to this Request for several reasons.

First, Mr. Polson objects to this Request because it seeks documents that are not relevant to the claims or defense of the parties to this action, and thus is beyond the scope of discovery pursuant to Federal Rule 26(b)(1). Second, Mr. Polson objects to this Request to the extent that it seeks the production of Sensitive Security Information (SSI), which is protected from disclosure pursuant to 49 U.S.C. § 114(r) and 49 C.F.R. Part 1520. Indeed, Mr. Polson is precluded from releasing such documents that may be in his possession, custody, or control without receiving the appropriate approval from TSA. Further, Mr. Polson objects to this Request to the extent it seeks documents of internal TSA “discussions” regarding “TSA SOPs” as protected by the deliberative process privilege, and to the extent it seeks information protected by attorney-client privilege and attorney work product.

**Request No. 5:** All discussions related to video evidence of the incident of 10 March 2016, where Defendant is shown to have struck Plaintiff's genitals.

a. Disclosures of above shall include: All discussions of video evidence, including how Defense Counsels became aware of any evidence, how the evidence was described by any parties, how the evidence was requested (with copies of requests), any NDAs that were requested by MWAA with full documentation of interactions thereof, any waivers or authorizations provided by MWAA related to any NDAs or authorizations or

restrictions for video use or non-use, and reasons for not providing any further evidence if only one video was provided.

b. Responses shall also include: Technical specifications of video evidence so far selected, how that evidence was selected and by whom, how that particular camera was selected, any discussions of evidence from other cameras (since the single camera angle apparently referenced does not record Plaintiff's nor Defendant's full activities or interactions during the full time of the incident and Plaintiff's and Defendant's presence in the checkpoint vicinity). Additionally, any written guidelines and audited proof that TSA complied with said guidelines for TSA SSI redaction used on the video evidence filed by Defendant, to include summaries of how the video evidence claimed as representative by Defendant was altered from its original form, plus all known file attributes of the video evidence as filed with the Court.

**Objections to Request No. 5:** Mr. Polson objects to this Request for several reasons.

First, Mr. Polson objects to this Request because it seeks documents that are not relevant to the claims or defense of the parties to this action, and thus is beyond the scope of discovery pursuant to Federal Rule 26(b)(1). Second, Mr. Polson objects to this Request because it does not comply with Rule 34 of the Federal Rules of Civil Procedure, in that Rule 34 does not require Mr. Polson to create documents in order to respond to a request for production. Moreover, Mr. Polson objects to this Request because it seeks documents protected by attorney-client privilege and attorney work product, as it requests the selection of evidence. Additionally, Mr. Polson objects to this request to the extent that it seeks the production of Sensitive Security Information (SSI), which is protected from disclosure pursuant to 49 U.S.C. § 114(r) and 49 C.F.R. Part 1520. Mr.

Polson is precluded from releasing such documents that may be in his possession, custody, or control without receiving the appropriate approval from TSA to do so.

Respectfully submitted,

DANA J. BOENTE  
United States Attorney

By:                     /s/                      
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### **CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was served upon the following via certified mail at the following address:

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By: /s/  
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